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for, the purchase coming after insolvency, the company would be buying in at par shares which had fallen in value. And the courts go great lengths to prevent individual shareholders from escaping their proportionate liability. For instance, where a creditor of a corporation took its shares at twenty per cent. of their par value in payment of a debt, it was held that he was liable for the unpaid balance. *Jackson* v. *Turner*, 64 Ia. 469. As the secret agreement in the principal case would release the subscriber from liability, the court seems clearly right in holding it void.

EQUITY — JURISDICTION — LIABILITY OF PURCHASER AT FORECLOSURE SALE. — In an action to foreclose a junior mortgage, the property was sold subject to a prior mortgage. The purchaser failed to complete payment at the proper time, and the property was thereafter sold under a judgment of foreclosure on the prior mortgage. The junior mortgagee then made a motion that the court direct the purchaser to pay the damages caused by the latter's default. *Held*, that the purchaser must pay. *State Bank* v. *Wilchinsky*, 112 N. Y. Supp. 1002 (App. Div.).

The jurisdiction of a court of equity to compel a purchaser at a sale made under its decree to complete his purchase or to pay damages, is well settled. *Wood* v. *Mann*, 3 Sumn. (U. S.) 318. It is frequently given as an all-sufficient reason for such jurisdiction, that since the purchaser has made himself a party to the proceedings, he may be compelled to perform his undertaking. See *Archer* v. *Archer*, 155 N. Y. 415. The real basis, however, for holding that the purchaser has made himself a party to the proceedings is the contract implied between him and the referee. See *Harding* v. *Harding*, 4 Myl. & C. 514; *Hegeman* v. *Johnson*, 35 Barb. (N. Y.) 200. The referee is under obligation to convey title, and the purchaser to pay the agreed price. *Townshend* v. *Simon*, 38 N. J. L. 239. And the referee may bring an action at law against the purchaser, for the mortgagee's benefit. *Sharman* v. *Walker*, 68 Ga. 148. But the theory that there is a contract has been repudiated in New York, so that there is no remedy against the purchaser, except as in the principal case by application to the court of equity which entertained the original suit. *Miller* v. *Collyer*, 36 Barb. (N. Y.) 250. This limitation of the purchaser's liability seems hardly justifiable.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ANCILLARY JURISDICTION. — The plaintiff, in a suit properly brought in a federal court, obtained a decree for the payment of damages. An execution was issued and returned unsatisfied. The plaintiff then filed the present bill in the same court praying that fraudulent conveyances by some of the defendants to the first bill be set aside and the execution satisfied. The plaintiff was a citizen of Massachusetts and some of the alleged fraudulent grantees, who had been made parties to the second bill, were citizens of the same state. These defendants moved to dismiss for want of jurisdiction. *Held*, that the bill is within the jurisdiction of the federal court. *Hobbs* v. *Gooding*, 164 Fed. 91 (Circ. Ct., D. Mass.).

In order to give jurisdiction on the ground of diverse citizenship, the diversity must exist between the plaintiff and all of the defendants. *Gage* v. *Riverside Trust Co.*, 156 Fed. 1002. The second bill here raised no federal question and was, therefore, clearly without the jurisdiction of the court in the absence of the original proceedings. There is, however, a well-established doctrine that after a federal court has once properly acquired jurisdiction, ancillary or supplemental proceedings may be therein entertained, without regard to the tests of jurisdiction applied to independent suits. *Root* v. *Woolworth*, 150 U. S. 401. Nor need the ancillary suit be between the same parties as the original suit. *Freeman* v. *Howe*, 24 How. (U. S.) 450. See *Krippendorf* v. *Hyde*, 110 U. S. 276, 280–281. The cases show a tendency to extend this jurisdiction rather than to curtail it. *White* v. *Ewing*, 159 U. S. 36. And that a court should exercise it to secure to litigants the benefit of its judgment or decree by removing obstacles to its enforcement seems logical. Bills substantially similar to that in the prin-

cipal case have been deemed ancillary and such a holding is, it is submitted, correct on principle. *Dewey* v. *West Fairmont Gas Co.*, 123 U. S. 329; *Hatch* v. *Dorr*, 4 McLean (U. S.) 112. See *Campbell* v. *Golden Cycle Mining Co.*, 141 Fed. 610, 613.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ANTICIPATION OF FEDERAL QUESTION. — In a bill for specific performance of a contract made by residents of the same state the plaintiff, after the necessary averments, alleged that the defendant based his refusal to comply with the contract on a certain act of Congress. And he further alleged that such act was either inapplicable or against the Constitution. *Held*, that the federal court is without jurisdiction. *Louisville & Nashville R. R. Co.* v. *Mottley*, 29 Sup. Ct. 42 (U. S. Sup. Ct., Nov., 1908).

The general presumption is that a federal court is without jurisdiction until the contrary affirmatively appears on the record. *Ex parte Smith*, 94 U. S. 455; *Robertson* v. *Cease*, 97 U. S. 646. It is usually sufficient that the facts essential to jurisdiction appear in any part of the record. *Denny* v. *Pironi*, 141 U. S. 121. But when federal jurisdiction is invoked on the ground that the suit is "one arising under the Constitution and laws of the United States," such federal question must be shown by the plaintiff at the outset in his bill or declaration. *California Oil & Gas Co.* v. *Miller*, 96 Fed. 12. See *Houston & Texas Central R. R. Co.* v. *Texas*, 177 U. S. 66. Moreover, the allegations on which jurisdiction is based must be material to the plaintiff's real cause of action. *Joy* v. *City of St. Louis*, 201 U. S. 332. Therefore, if such averments have been inserted merely to make the suit one of federal cognizance, the case will be dismissed. *Robinson* v. *Anderson*, 121 U. S. 522. And it is well settled that in cases both of original jurisdiction and of removal an allegation in the nature of a reply to an expected defense will not confer jurisdiction. *Tennessee* v. *Union & Planters' Bank*, 152 U. S. 454; *Joy* v. *City of St. Louis*, *supra*. This seems correct, as the defendant might not in fact set up such defense. *Florida Central, etc., R. R. Co.* v. *Bell*, 176 U. S. 321. And even if such answer were made, that in itself would not be sufficient to bring the case within federal jurisdiction. *Colorado, etc., Mining Co.* v. *Turck*, 150 U. S. 138. See *Metcalf* v. *Watertown*, 128 U. S. 586.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — SUIT AGAINST "STATE DISPENSARY COMMISSION." — The Legislature of South Carolina created a commission to wind up the affairs of the state liquor business. The complainants, who claimed for liquor sold to the state, sued the commission in the federal court for an accounting, an injunction, and a receivership. *Held*, that the suit is not one against the state within the meaning of the Eleventh Amendment. *Murray* v. *Wilson Distilling Co.*, 164 Fed. 1 (C. C. A., Fourth Circ.). See NOTES, p. 289.

INJUNCTIONS — ACTS RESTRAINED — INTERFERENCE WITH HUNTING RIGHTS. — The defendant, claiming the exclusive right to hunt ducks on an arm of certain navigable waters, persistently prevented the plaintiff from hunting, by rowing among the decoys and frightening the ducks. *Held*, that the plaintiff will be protected by injunction. *Ainsworth* v. *Munoskong Hunting and Fishing Club*, 116 N. W. 992 (Mich.).

The owner of realty has such a right in all game on his property that an injunction will be issued to prevent hunting thereon, even though the entire property is subject to use as a waterway. *Sterling* v. *Jackson*, 69 Mich. 488. And damages will be given against one who intentionally frightens game on another's land. *Ibottson* v. *Peat*, 3 H. & C. 644. The right to capture and subject to ownership game on public lands, or fish in public navigable waters, resides in the people of the sovereignty. *Ne-pee-nauk Club* v. *Wilson*, 96 Wis. 290. Where this right is exercised as a vocation, it will be protected as such, against wrongful acts. However, competition in itself for such game is not unlawful. See *Ibottson* v. *Peat*, *supra*. But an action on the case was allowed for wilfully